STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OPTIMUM RENEWABLES LLC, Complainant, vs. INTERSTATE POWER AND LIGHT COMPANY, Respondent.	DOCKET NO. FCU-2017-0004

ORDER ADDRESSING COMPLAINT AND GRANTING APPLICATION FOR CONFIDENTIAL TREATMENT FILED NOVEMBER 9, 2017

(Issued January 3, 2018)

PROCEDURAL BACKGROUND

On April 27, 2017, Steve Thompson, CEO of Optimum Renewables LLC (Optimum), filed an informal complaint with the Utilities Board (Board) against Interstate Power and Light Company (IPL) regarding three eight-megawatt wind projects to be located near Mason City, Manchester, and Centerville, Iowa. In its complaint, Optimum raised three issues: (1) that the power purchase agreement (PPA) rate offered by IPL for the projects is too low and the contract term is too short; (2) that IPL is insisting on curtailing the projects based on load, which Optimum asserts is in conflict with the Public Utility Regulatory Policies Act (PURPA); and (3) that the cost of interconnection for the facilities is too high.

On June 8, 2017, the Board issued an order opening a formal complaint proceeding identified as Docket No. FCU-2017-0004. Testimony was filed by Optimum, IPL, and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. The Board granted petitions to intervene filed by ITC Midwest LLC and jointly by the Environmental Law and Policy Center and Iowa Environmental Council (collectively "Environmental Intervenors").

A hearing was held on August 29, 2017. Post-hearing briefs and reply briefs were filed by Optimum, IPL, OCA, and the Environmental Intervenors.

POWER PURCHASE AGREEMENT

The Public Utility Regulatory Policies Act (PURPA) of 1978 requires that electric utilities purchase electric energy from qualifying small power production facilities (QFs). 16 U.S.C. § 824a-3(a)(2) (2012). PURPA also provides that the electric utility shall not discriminate against QFs and shall not be required to pay more than the avoided costs for purchases, which are defined as "the incremental costs to an electric utility of electric energy and capacity or both which, but for the purchase from the [QF], such utility would generate itself or purchase from another source." 18 C.F.R. §§ 292.101(b)(6), 292.304(a).

QFs have the option to provide energy either as available or subject to a legally enforceable obligation. *Id.* § 292.304(d). When a QF chooses to provide energy subject to a legally enforceable obligation over a specified term, the QF has the option to determine the rates for purchases be based on either the avoided costs

at the time of delivery or calculated at the time the obligation is incurred. *Id.* The Federal Energy Regulatory Commission (FERC) requires that the term of a legally enforceable obligation under PURPA "be long enough to allow QFs reasonable opportunities to attract capital from potential investors." *Windham Solar LLC and Allco Finance Ltd.*, 157 F.E.R.C. ¶ 61,134, at P 8 (2016).

The facilities at issue in this complaint are QFs that have chosen to provide electric energy to IPL pursuant to a legally enforceable obligation over a specified term, with the avoided costs rate being determined at the time the legally enforceable obligation is incurred.

A. Term

1. Parties' Positions

In its complaint, Optimum states that IPL offered a five-year term for the requested PPAs. (Optimum Complaint at 1.) Optimum requests that the Board require IPL to enter into a PPA for a term of 25 years. *Id.* at 2. Optimum states that a longer term PPA is required to help secure financing for the projects. (Optimum Post-Hearing Comments at 2.) At hearing, Optimum witness Steve Thompson testified that the owners of the turbines require at least 15- to 20-year terms to obtain financing for the projects. (Tr. at 22-23.)

IPL asserts that a five-year term is reasonable for the PPAs at issue in the complaint. (IPL Initial Brief at 19.) IPL states that other jurisdictions have approved five-year terms for PURPA PPAs and that a five-year term is sufficient to allow

Optimum reasonable opportunities to attract capital from potential investors. *Id.* at 19-20.

The Environmental Intervenors assert that only long-term contracts are adequate to meet the requirements of PURPA. (*See* Environmental Intervenors Post-Hearing Brief at 6.) The Environmental Intervenors cite recent examples of other state utility commissions that have approved PURPA PPAs for 15- and 20-year terms. *Id.* at 7-8. The Environmental Intervenors assert that short term PPAs curtail QF development. *Id.* at 8-9.

OCA supports a long-term PPA, stating that a longer term PPA is often necessary in order for a prospective QF to attract investment and financing on reasonable terms. (OCA Initial Brief at 17.) OCA asserts that PPA terms that support access to capital are beneficial to both the QF and the purchasing utility. *Id.*

2. Board Decision

FERC requires that the term of a PURPA PPA be long enough to allow QFs reasonable opportunities to attract capital from potential investors. *Windham Solar LLC*, 157 F.E.R.C. ¶ 61,134, at P 8. Neither IPL or Optimum have provided testimony from entities involved in financing these or similar projects to support its position regarding the term length required to obtain financing.

In 2015, IPL issued a request for proposals (RFP) for PPA wind projects. (IPL Exhibit Niccolls Direct, at 9). IPL provided the PPA price and term components of five responses to the 2015 RFP. *Id.* at 9-10. The shortest PPA term of the proposals

described by IPL was 15 years, and the remaining four PPA proposals had 25-year terms. *Id.* This competitive market information supports a finding that a term of 15 to 25 years is necessary for these types of projects.

The Board will require IPL to offer PPAs with 20-year terms for the projects at issue in this complaint. As is evident from the testimony, a 20-year term is of sufficient length to allow the project owners a reasonable opportunity to attract capital, as required by PURPA.

B. Price

1. Parties' Positions

IPL offered Optimum a PPA price based on IPL's June 30, 2016, avoided costs filing in Docket No. IAC-2016-1503. (IPL Initial Brief at 12-13.) IPL calculated its avoided costs for that filing using the same Electric Generation Expansion Analysis System (EGEAS) modeling that IPL used in its integrated resource plan. *Id.* at 12. IPL argues that this is an accurate representation of its avoided costs and that the competitive market information supports that finding. *Id.* at 11-12.

Optimum argues that the PPA price should be based, at least partially, on IPL's 2014 avoided costs filing. (Optimum Post-Hearing Comments at 2.) Optimum notes that it submitted interconnection applications and requested a PPA letter of intent prior to IPL's June 30, 2016, avoided costs filing. *Id.* Optimum requests that the Board set the PPA price based on an average of the avoided costs in IPL's 2014 and 2016 filings, levelized over 26 years. *Id.*

OCA asserts that IPL mistakenly based its offer on the levelized costs in its 2016 avoided costs filing because a legally enforceable obligation arose prior to June 30, 2016, when IPL made its 2016 avoided costs filing. (OCA Initial Brief at 11-12.) OCA states that the creation of a legally enforceable obligation under PURPA cannot be conditioned on factors or actions controlled by IPL. *Id.* at 12. OCA states that the PPA negotiations between IPL and Optimum could have taken place at the same time as the interconnection negotiations. *Id.* at 13. OCA requests that the Board set the PPA price at an average of the avoided costs based on IPL's 2014 and 2016 filings. *Id.* at 18.

The Environmental Intervenors support OCA's position in regards to the PPA price and request that the Board set a clear precedent in regard to the establishment of a legally enforceable obligation under PURPA. (Environmental Intervenors Post-Hearing Reply Brief at 2, 7.) The Environmental Intervenors also request the Board provide adequate relief to Optimum because the facilities lost eligibility for Iowa Renewable Energy Tax Credits allegedly due to IPL's actions. (Environmental Intervenors Post-Hearing Brief at 11.)

2. Board Decision

The Board will not consider the facilities' failure to meet the eligibility requirements of Iowa Code chapter 476C in its decision. The Board is tasked with determining eligibility for renewable energy tax credits under Iowa Code chapter 476C. However, Iowa Code § 476C.1(6)(d) requires that a facility must be in service

prior to January 1, 2018, in order to be considered an eligible renewable energy facility.

There is insufficient evidence in the record to support a finding that, absent alleged actions taken by IPL that delayed the projects, the projects would have been operational prior to the January 1, 2018, deadline. Further, even if there were sufficient evidence to make such a finding, nothing in Iowa Code chapters 476C or 476 or PURPA authorizes the Board to grant the relief requested. Therefore, the Board will not grant relief based on the facilities' failure to meet the eligibility requirements for Iowa Code chapter 476C tax credits, even if IPL's actions contributed to that result.

The Board also finds that a legally enforceable obligation was not created prior to June 30, 2016. A legally enforceable obligation cannot arise prior to the time in which a QF makes known to a utility that the QF intends to provide energy subject to a legally enforceable obligation with the avoided costs to be determined at the time the obligation is incurred. In an email dated August 4, 2016, Optimum mentions a PPA letter of intent for the projects at issue in this case. (Optimum Complaint at Attachment 3d.) There is no evidence in the record to establish the existence of communications regarding a PPA or Optimum's decision to sell energy pursuant to a legally enforceable obligation prior to that August 4, 2016, email.

Because there is no evidence in the record to support a finding that a legally enforceable obligation arose prior to June 30, 2016, the Board need not make a finding regarding when a legally enforceable obligation arose in this case.

Finally, the Board finds that avoided costs rates calculated using an economic dispatch model are appropriate for use in determining the price per MWh for PURPA PPAs. Avoided costs are defined as "the incremental costs to an electric utility of electric energy and capacity or both which, but for the purchase from the [QF], such utility would generate itself or purchase from another source." 18 C.F.R. §§ 292.101(b)(6), 292.304(a).

IPL has traditionally used the EGEAS model to determine its avoided costs and the Board has previously approved this method of determining avoided costs rates for PURPA PPAs. (IPL Initial Brief at 11; *Midwest Renewable Energy Projects LLC v. Interstate Power and Light Co.*, "Order on Rehearing," Docket No. AEP-05-1 (May 31, 2007).) The avoided costs calculated by the EGEAS model show the projected cost to IPL to generate the energy for itself. Further, the EGEAS calculated avoided costs provided by IPL on November 9, 2017, are supported by the competitive market prices available in the record. Those competitive market prices represent proxies that inform the Board's decision regarding what it would cost IPL to replace the energy provided by the QF with energy purchased from another source. IPL's avoided costs, calculated with the EGEAS model, are $31.32 per MWh when levelized over 20 years. (IPL Nov. 9, 2017, Response at Attachment B.)

Based on the foregoing discussion, the Board will require IPL to offer PPAs to the turbine owners to purchase energy produced by the facilities at issue in this complaint for a term of 20 years at a rate of $31.32 per MWh. This price is exclusive of any payment for renewable energy credits. The most recent prices for renewable energy credits offered by IPL and Optimum are the same, and the Board will require IPL to pay that price for renewable energy credits generated by the projects. (*See* IPL Initial Brief at 6.)

CURTAILMENT

Optimum's complaint in regards to curtailment was that IPL should not be permitted to curtail the energy generated by the facilities at issue in this complaint based on load. (Optimum Exhibit Thompson Direct at 4.) IPL states that it is obligated to prevent adverse impacts on affected systems. (IPL Initial Brief at 4.) Over the course of the interconnection process for these facilities, IPL developed a process with the owners of affected systems to formalize discussions between IPL and the affected systems regarding interconnection of distributed energy resources. *Id.* at 20-22.

Since the start of this proceeding, IPL has received notice from all owners of affected systems that the facilities at issue do not present backflow concerns and therefore there is no need to curtail the energy produced by these facilities for that reason. IPL witness McGovern testified that once IPL received such notice from all

owners of affected systems, IPL would remove the requirement to curtail due to potential backflow to the transmission system. (Tr. at 61.)

Optimum's complaint regarding potential curtailment due to potential backflow to the transmission system is moot and the Board will not make a finding concerning curtailment in this case.

INTERCONNECTION COSTS

PURPA QFs are obligated to pay any interconnection costs that the Board may assess against the QF on a nondiscriminatory basis with respect to other customers with similar load characteristics. 18 C.F.R. § 292.306(a). The Board is also required to determine the manner for payment of interconnection costs, which may include reimbursement of the utility over a reasonable period of time. 18 C.F.R. § 292.306(b).

A. Parties' Positions

The facilities at issue in this complaint will interconnect with IPL's distribution system at three different substations: the Manchester Industrial, Mason City Highway 106, and Centerville South substations. (IPL Exhibit Van Zante Direct at 11-13.) IPL asserts that the cost estimates for upgrading each of the substations are driven by the age of the substations, whether the substation equipment and technology complies with IPL's current substation standards, and other factors. (IPL Initial Brief at 24.) IPL states that the cost estimates accurately reflect the work and equipment necessary to interconnect the facilities to the points of interconnection identified by

Optimum. *Id.* IPL provides detailed cost estimates for upgrading all three substations in order to interconnect the facilities. (IPL Exhibit Van Zante Direct at Schedules A, B.)

IPL states that the upgrades to the substations would not be performed absent Optimum's interconnection requests. (Tr. at 83.) IPL acknowledges that replacing the old equipment at the substations with newer equipment will provide reliability benefits to the system as a whole. *Id.* However, IPL asserts that it is impossible to separate those benefits from the upgrades required by the interconnection, and thereby attribute a portion of the costs to the overall system. (IPL Reply Brief at 27.)

Optimum objects to the cost estimates provided by IPL. (Optimum Post-Hearing Comments at 3.) Optimum states that a direct transfer trip scheme, as proposed by IPL, can be implemented in compliance with appropriate safety standards without adding the breakers proposed by IPL. *Id.* Optimum states that the breakers are driving a majority of the cost estimates. *Id.* Optimum argues that upgrades compliant with appropriate safety standards can be made for under $100,000 per site. *Id.*

OCA states that Optimum is obligated to pay reasonable and non-discriminatory interconnection costs that are necessary to safely interconnect the facilities. (OCA Initial Brief at 19-20.) OCA asserts that IPL's estimated interconnection costs are based on a design intended to facilitate IPL's new substation standards, which are above what is required to meet current safety

standards. Because of this, IPL's estimated costs include costs in excess of the amount required to directly and safely interconnect the facilities. (*Id.* at 20.) OCA states that the substation upgrades will provide enhanced reliability that will generally benefit IPL's system. *Id.*

B. Board Decision

Board rule 199 IAC 45.11 requires an interconnection customer, like Optimum, to pay for costs associated with connecting its facilities to a utility's system. 199 IAC 45.11(7)(d). Article 5 of the Board's "Levels 2-4 Distributed Generation Interconnection Request Agreement" provides the manner in which the interconnection customer is to reimburse the utility for the interconnection costs.

IPL is the only party in this case that has provided a detailed cost estimate for substation upgrades necessary for interconnecting the facilities. IPL states that the upgrades are required for safety and reliability reasons, including the prevention of unintentional islanding of utility load with the interconnecting facilities. (IPL Exhibit Van Zante Direct at 6-7.) IPL states that the direct transfer trip scheme proposed will prevent unintentional islanding and ensure compliance with relevant safety regulations. *Id.* at 7-8.

Although Optimum states that the direct transfer trip scheme can be implemented without some of the breakers that IPL proposes to install, Optimum has not provided any specific cost estimates or specific upgrade plans in this proceeding. Similarly, OCA has suggested that a portion of the upgrade costs should be attributed

to IPL bringing the substations into line with IPL's new substation standards, and that those costs are above what is required by relevant safety standards. (OCA Initial Brief at 20.) However, OCA does not identify any specific costs that are in excess of what would be required by the relevant safety standards.

The Board will require the turbine owner to pay all actual interconnection costs required to connect the facilities to IPL's system in accordance with the interconnection upgrade scheme proposed by IPL.

INTERCONNECTION DELAYS

Although Optimum did not specifically raise the issue of interconnection delays in its complaint, that issue was mentioned by all parties to this proceeding. Board rules at 199 IAC chapter 45 define timelines for both the interconnection customer and the utility to complete steps in the generator interconnection process. Although the record in this proceeding is not complete regarding the timing of all of the steps in the generator interconnection process, it is clear that not all of the response times required by chapter 45 were met. At hearing, IPL witness Nicholas J. Smith admitted that "[p]roject deadlines did extend." (Tr. at 41.)

Because the record in this case is not complete in regards to the generator interconnection process and the timeline of completion for each step in that process, the Board is unable to determine the extent to which the required timelines were not met. However, the Board's rules require all parties to the generator interconnection

process to meet the deadlines specified in 199 IAC chapter 45 to ensure timely completion of the generator interconnection process.

APPLICATION FOR CONFIDENTIAL TREATMENT

On November 9, 2017, IPL filed an "Application for Confidential Treatment." In its application, IPL requests confidential treatment of certain information in its November 9, 2017, response to Board order. The information consists of projected generating cost information for the 2022 to 2042 time frame. IPL filed the information for which confidential treatment is sought separately in the Board's electronic filing system. Along with its application, IPL filed an affidavit of a corporate officer in support of its request for confidential treatment.

IPL asserts that the information identified as confidential in its request should be withheld from public inspection pursuant to Iowa Code § 22.7(6) as a report to a government agency which, if released, would give advantage to competitors and serve no public purpose. IPL also asserts that the information is a trade secret, which would be protected pursuant to Iowa Code § 22.7(3).

IPL states that the confidential information is information that could be used by IPL's competition to gather pricing and market-sensitive information relating to IPL's negotiating position. IPL asserts that disclosure of such information could harm IPL's position in negotiation of future PPAs to the detriment of customers, which furthers no public purpose.

The Board will grant confidential treatment for the information detailed in IPL's application. The Board previously granted confidential treatment for similar information in its previous orders granting confidential treatment in this docket. The Board finds that the information marked as confidential meets the requirements of Iowa Code § 22.7(6) and should be protected from public disclosure. The information is filed pursuant to Board rules, contains information that competitors of IPL could use to gain a competitive advantage, and release of the information would serve no public purpose.

Since the Board has found this information is protected from public disclosure pursuant to Iowa Code § 22.7(6), it is unnecessary to address whether it is a trade secret under Iowa Code § 22.7(3).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Interstate Power and Light Company shall offer a power purchase agreement with a term of 20 years at a rate of $31.32 per MWH to the owner of the facilities at issue in this complaint. The power purchase agreement shall provide that Interstate Power and Light Company will purchase renewable energy credits generated by the facilities at the price offered by Interstate Power and Light Company on May 22, 2017.

2. Optimum Renewables LLC's complaint in regards to curtailment due to backflow to the transmission system is moot.

3. The owner of the facilities shall pay all of the actual interconnection costs required to connect the facilities to Interstate Power and Light Company's system in accordance with the interconnection upgrade scheme proposed by Interstate Power and Light Company.

4. The application for confidential treatment filed by Interstate Power and Light Company on November 9, 2017, is granted.

5. The information that has been granted confidential treatment shall be held confidential by the Utilities Board subject to the provisions of 199 IAC 1.9(8)(b)(3).

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Trisha M. Quijano */s/ Richard W. Lozier Jr.*
Executive Secretary, Designee

Dated at Des Moines, Iowa, this 3rd day of January 2018.